

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

NOEL LERMA	§	
VS.	§	CIVIL ACTION NO. 1:06-CV-475
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Noel Lerma, a federal prisoner, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The Court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends denying the motion.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation. Movant contends his sentence was based on an amount of heroin in excess of the "detectable amount" charged in the indictment, in violation of *United States v. Booker*, 543 U.S. 220, 244 (2005) and *Blakely v. Washington*, 542 U.S. 296, 125 S. Ct. 2531 (2004). However, the amount of heroin attributed to movant in the presentence investigation report had no effect on his sentence. Based on the amount of heroin attributed to him, movant's base offense level would have been 18. Because he was a career

offender, movant was assigned a base offense level of 32. Therefore, movant's enhanced sentence was the result of his career offender status, not the amount of heroin attributed to him.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **19** day of **January, 2007**.

A handwritten signature in cursive script, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge